

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SANDRA BOSTON,¹

Respondent Below-
Appellant,

v.

RANDY L. LUCAS, SR.,

Petitioner Below-
Appellee.

§

§ No. 430, 2009

§

§

§ Court Below—Family Court

§ of the State of Delaware,

§ in and for Sussex County

§ File No. CS92-04559

§ Petition No. 09-09112

§

§

Submitted: August 6, 2010

Decided: September 24, 2010

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 24th day of September 2010, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Sandra Boston ("Mother"), filed this appeal from a Family Court, dated June 22, 2009, granting the petition of Randy L. Lucas ("Father") for modification of custody. Having reviewed the parties' respective contentions and the record below, we find no error in the Family Court's findings and conclusions. Accordingly, the Family Court's judgment shall be affirmed.

¹ The Court assigned pseudonyms to the parties and their minor daughter pursuant to Supreme Court Rule 7(d).

(2) The record reflects that the parties are the parents of two children. The present custody proceeding involves only the parties' ten-year-old daughter, Sally. On January 3, 2003, the Family Court entered an order granting the parties joint custody of Sally with primary residential placement with Mother. On March 16, 2009, Father filed a petition for modification of custody. The Family Court held a hearing on the petition on June 22, 2009. Both parties appeared pro se. Neither party presented any evidence or witnesses other than their own testimony. The Family Court also interviewed Sally, who expressed her desire to live primarily with her Father. At the conclusion of the hearing, the Family Court announced its decision granting Father's petition.

(3) The gist of Mother's argument on appeal is that Father's testimony was not true. She further argues that the Family Court misunderstood Sally's statements to the court. Our standard of review of a decision of the Family Court extends to a review of the facts and law, as well as inferences and deductions made by the trial judge.² We have the duty to review the sufficiency of the evidence and to test the propriety of the findings.³ Findings of fact will not be disturbed on appeal unless they are

² *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).

³ *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).

determined to be clearly erroneous.⁴ We will not substitute our opinion for the inferences and deductions of the trial judge if those inferences are supported by the record.⁵

(4) Under Delaware law, the Family Court is required to determine legal custody and residential arrangements for a child in accordance with the best interests of the child. The criteria for determining the best interests of the child are set forth in Section 722 of Title 13 of the Delaware Code.⁶ The criteria in Section 722 must be balanced in accordance with the factual circumstances presented to the Family Court in each case. As this Court has

⁴ *Mundy v. Devon*, 906 A.2d 750, 752 (Del. 2006).

⁵ *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d at 1204.

⁶ Section 722(a) provides:

The Court shall determine the legal custody and residential arrangements for a child in accordance with the best interests of the child. In determining the best interests of the child, the Court shall consider all relevant factors including:

(1) The wishes of the child's parent or parents as to his or her custody and residential arrangements;

(2) The wishes of the child as to his or her custodians(s) and residential arrangements;

(3) The interaction and interrelationship of the child with his or her parents, grandparents, siblings, persons cohabitating in the relationship of husband and wife with a parent of the child, any other residents of the household or persons who may significantly affect the child's best interests;

(4) The child's adjustment to his or her home, school and community;

(5) The mental and physical health of all individuals involved;

(6) Past and present compliance by both parents with their rights and responsibilities to their child under § 701 of this title; and

(7) Evidence of domestic violence as provided for in Chapter 7A of this title.

noted, the weight given to one factor or combination of factors will be different in any given proceeding.⁷

(5) In this case, the Family Court enumerated all of the factors set forth in Section 722 and found that, with the exception of §§ 722(a)(2) and (a)(3), none of the best interest factors favored one parent over the other. With respect to Sally's wishes, however, the Family Court noted it had talked with the ten-year-old and that she clearly expressed a desire to live with her Father full-time. The Family Court also noted that the parties' older son lives with Father full-time and that Sally enjoyed spending time with her older brother.

(6) The factual findings of the trial judge are amply supported by the record, and we find no basis to disturb those findings on appeal. Moreover, the Family Court properly applied the law to the facts in concluding that modifying residential placement was in Sally's best interests.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED.

BY THE COURT:

/s/Henry duPont Ridgely
Justice

⁷ *Fisher v. Fisher*, 691 A.2d 619, 623 (Del. 1997).